IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 172 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SUSSEN TEXTILE BEARINGS LTD

Appearance:

1. INCOME TAX REFERENCE No. 172 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the opinion of this Court at the instance of the revenue :-

"Whether, in law and on facts, the Appellate Tribunal is right in holding that the contribution to Star Research Centre even prior to the date of approval granted by the Government of India u/s.35(1)(ii) is an allowable expenditure ?"

2. The assessment year is 1982-83 and the relevant accounting period is year ended on 30.9.1981. The assessee, a limited Company, made payment of Rs.3,26,890/- on various dates as follows to Star Research Centre and claimed deduction under Section 35(1)(ii) of the Act :-

Rs. 94,890/- on 13.5.1981
Rs. 10,000/- on 27.8.1981
Rs.1,00,000/- on 23.9.1981
Rs. 50,000/- on 23.9.1981
Rs. 10,000/- on 23.9.1981
Rs. 12,000/- on 26.9.1981
Rs. 50,000/- on 30.9.1981

Rs.3,26,890/-

The Assessing Officer disallowed the claim holding that some of the contributions were given prior to the date with effect from which the Research Centre has been approved viz. 10.9.1981 and hence the assessee was not entitled to the deduction claimed. In appeal, the Commissioner of Income-tax (Appeals) took into consideration the fact that the approval was granted for a period of two years from 10.9.1981 to 9.9.1983 by a notification of the Government of India dated 15.10.1981 and further that Star Research Centre fulfilled all the stipulated conditions. The assessee was entitled to deduction under Section 35(1)(ii) of the Act in relation to contributions made after the date of approval i.e. 10.9.1981. The Commissioner of Income-tax (Appeals) accordingly granted deduction to the extent of Rs.2,22,000/- while retaining the addition to the tune of Rs.1,04,890/-.

3. The assessee went in appeal before the Tribunal against the partial retention of the disallowance and the

Tribunal held that the assessee was entitled to deduction of the entire amount claimed as the assessee-Company had acted bona fide and in good faith that the Centre would get recognition and on the basis of such belief, it had made contributions even prior to the receipt of the order of approval.

4. We have heard Mr Akil Kureshi for the applicant-revenue. Though served, none appears for the respondent-assessee. Mr Kureshi submitted that the approach and the reasoning adopted by the Tribunal were not warranted by plain reading of the provisions. It was submitted that unless and until the institution was approved by the prescribed authority, the deduction claimed could not be granted and in the instant case, admittedly, the approval was effective only with effect from 10.9.1981.

5. It is pertinent to note that the application was made by Star Research Centre on 4.5.1981 and the dates of the two cheques which were disallowed by the Commissioner of Income-tax (Appeals) fall after the date of the application. At the time of hearing of the reference application, the attention of the Tribunal was invited to the evidence placed at pages 67 to 71 of the compilation filed before it in support of the contention that the amount paid by the assessee-Company to Star Research Centre had been treated as advance by both the parties and a consolidated receipt in respect of the entire amount of Rs.3,26,890/- (inclusive of Rs.1,04,890/-) was passed by the Centre on 26.9.1981 i.e. the date after the Centre was granted recognition under Section 35(1)(ii) of the Act.

6. Once the assessee-Company and the Centre had treated the entire payment as advance and the Centre had passed the receipt towards research expenditure only on 26.9.1981, all the requirements laid down in Section 35(1)(ii) stand satisfied and it would not be possible to state that the assessee was not entitled to claim deduction of the entire amount. Admittedly, when the receipt was passed by the Centre, it had received the approval from the Government of India as required by the provisions of the Act and that was the only point of time when it accepted the amount in question as being relatable to expenditure on scientific research which is the requirement laid down by Section 35(1) of the Act. In light of this situation, the ultimate conclusion of the Tribunal that the assessee was entitled to deduction in relation to contributions to Star Research Centre of the entire amount under Section 35(1)(ii) of the Act as

an allowable expenditure is correct, though for the reasons stated hereinbefore.

7. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

8. The reference stands disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-